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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,942	08/25/2000	Stephen B. Crain	CJM 9637	6282

321 7590 04/02/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

COURSON, TANIA C

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 04/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/648,942

Applicant(s)

CRAIN ET AL.

Examiner

Tania C. Courson

Art Unit

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-- Th MAILING DATE of this communication appears on th cover sheet with the correspondenc address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-30 and 37 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 11, 14, 16 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 5, 7-10, 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6, 14 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by SECO (See also Attachment 1).

SECO discloses in Attachment 1, pages 1-6, a surveying pole comprising:

With respect to claims 1 and 35:

- a) at least one pole section (Attachment 1, page 6, fig. 6A);
- b) ~~a point mounted on a lower end of said one pole section for engaging the~~  
ground/surface and for precise location of the surveying pole on a surface  
(Attachment 1, page 6, fig. 6A);
- c) a shoe sized and shaped for covering the point, the shoe being formed for releasable connection of the shoe to the surveying pole over the point to selectively cover the point (Attachment 1, page 5, fig. 5A);
- d) the shoe having a blunt bottom wall engageable with the ground/surface and having a greater surface area for engagement with the surface than the point, where the shoe covers the point, whereby the surveying pole is capable of selective configuration for use in terrain having different surface properties without removal of the point (Attachment 1, page 5, fig. 5A).

With respect to claim 2:

- a) wherein the point is formed for releasable connection of the shoe thereto  
(Attachment 1, page 6, fig. 6A).

With respect to claim 3:

- a) wherein the point and shoe each have threads formed thereon which are interchangeable for connecting the shoe to the point in a position substantially covering the point (Attachment 1, pages 5-6, figs. 5A and 6A).

With respect to claim 6:

- a) wherein the bottom wall is flat and has a surface area sized for engaging soft terrain to support the surveying pole above the terrain (Attachment 1, pages 5-6, figs. 5A and 6A).

With respect to claim 14:

- a) a fitting received in and substantially closing an end of said one pole section  
(Attachment 1, page 6, fig. 6B);
- b) the fitting including an axially facing surface having a surface area and facing axially outward from said one pole section (Attachment 1, page 6, fig. 6B);
- c) the axially facing surface including a peripheral engagement portion constituting a first smaller portion of the axially facing surface area and an axially recessed

portion constituting a second larger portion of the surface area recessed axially from the peripheral engagement portion (Attachment 1, page 6, fig. 6B).

With respect to claim 34 and 36:

- a) wherein a distal end of the point is closely adjacent to the bottom wall when the shoe is connected to the surveying pole to cover the point whereby the surveying pole has a length which is substantially unchanged upon connection of the shoe to the surveying pole (Attachment 1, pages 5-6, figs. 5A and 6A).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over SECO, in view of Suverkrop (US 2,594,823).

SECO discloses a surveying pole, as stated above in paragraph 2.

SECO further discloses a surveying pole comprising a second pole section telescopingly received in the first pole section for extension and retraction relative to the first section (Attachment 1, page 6, fig. 6A), a point adapted for releasable mounting on a lower end of said at least one pole section, the point comprising a body (Attachment 1, page 6, fig. 6A).

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SECO does not disclose a shoe made of a polymeric material, a second pole section being adapted for releasable, snap-together connection with the first pole section, and a tip formed for releasable interconnection with a point body, a spare tip formed for releasable interconnection with the body, the body having a cavity therein sized and shaped to hold the spare tip when not in use.

Regarding claim 4: SECO discloses the shoe (Attachment 1, page 5, fig. 5A) made of a durable material. The particular type of material used to make the shoe, absent any criticality, is only considered to be the use of a “ preferred ” or “ optimum ” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of Applicant’s apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960 ) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

With respect to the term “ adapted for ” in claim 11: SECO discloses a surveying pole which is considered to be “ adapted for ” releasable, snap-together connection with the first pole section as stated in the claim. Furthermore, the term “ adapted for ” is similar to the term “ adapted to ” of which has been held to make what follows a functional statement and not a positive limitation because it has been held that the recitation that an element is “ adapted to ”

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perform a function only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

Suverkrop teaches a plum bob that consists of a tip formed for releasable interconnection with a point body (Fig. 2, tip 2), a spare tip formed for releasable interconnection with the body (Fig. 2, replacement point 6), the body having a cavity (Fig. 2, cavity 5) therein sized and shaped to hold the spare tip when not in use (Fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the surveying pole of SECO, so as to include a tip and a spare tip formed for releasable interconnection with the body and the body having a cavity, as taught by Suverkrop, so as to provide a means for reliability of the tip should the tip be accidentally lost or damaged during use of the device.

#### *Allowable Subject Matter*

5. Claims 17-30 and 37 are allowed.
6. Claims 5, 7-10, 12-13, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The prior art cited on PTO-892 and not mentioned above disclose a pole holding devices:

Fanti (US 5,271,196)

Hamilton et al. (US 5,119,564)

Smith (US 5,036,613)

Miller (US 4,803,784)

Brooks (US 4,131,122)

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (703) 305-3031.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this

Organization where this application or proceeding is assigned is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
March 31, 2003